

REMARKS

Please enter this Submission in response to the Request for Continued Examination filed herewith under 37 CFR §1.114.

In response to an Office Action dated August 12, 2003 (Paper No. 8), Applicant has amended the claims as set forth above. More particularly:

Independent claims 1, 23, 45 and 51 have been amended to require that the particulate material (7) is accommodated within at least one region (6) of a surface (4), at least some of the particulate material (7) is disposed on the region (6) so as to be readily dislodged from the region (6) by air flowing at the surface (4) while not being readily dislodged by air flowing across the surface (4). Support for these amendments can be found in Applicant's specification at: page 6, lines 19-24 ("downthrust of air . . . render[s] the particulate material . . . airborne"); page 7, lines 20-23 ("will displace air *downwardly* . . . to render the particulate material . . . airborne"); and page 13, line 28-page 14, line 3 ("gas . . . directed *across* the surface" did not remove a significant amount of the particles).

Claim 1 has been further amended to require that the particulate material (7) is rendered airborne as a result of the particulate material being sufficiently readily dislodged from the region by forces resulting from the wing beats of a pest adjacent the surface (4). Support for this amendment can be found in Applicant's specification

at page 10, lines 1-3 (“rendered airborne by the movement of the pests, for example, the wing beats thereof, on, *above* or in the region of the powder-bearing surface 4”).

Independent claims 45 and 51 and dependent claims 10 and 32 have been amended to specify that the particulate material (7) is not electrostatically charged when first rendered airborne by the pest. Support for this amendment can be found in Applicant’s specification at page 4, lines 13-15 (“*become*[s] electrostatically charged”), and page 7, lines 22-25 (“it can, under certain circumstances, *acquire* an electrostatic charge”).

Dependent claims 4, 26, 50, and 56 have been amended to specify that the particulate material (7) is sufficiently fine as to become airborne when the pest is an insect pest approximately the size of a housefly. Support for this amendment can be found in Applicant’s specification at page 12, line 29.

Dependent claims 11 and 53 have been amended to recite that the particulate material (7) is initially deposited in the region (6) of the surface (4) as an electrostatically charged fine powder whose electrostatic charge subsequently discharges. Support for this amendment can be found in Applicant’s specification at page 5, lines 16-24.

Dependent claims 12 and 36 have been amended to recite that the region (6) accommodating the particulate material (7) is at least one recess in the surface (4), and

that the recess (6) is sized and shaped to enable the material (7) to be readily dislodged therefrom by air flowing into the recess (6) yet the powder is not readily dislodged from the recess (6) by air flowing across the surface (4). Support for this amendment can be found in Applicant's specification at page 6, line 14-page 7, line 5, and page 7, lines 20-25.

Dependent claim 14 has been amended to recite that the recess (6) has a maximum width of less than the body length of the pest. Support for this amendment can be found in original claim 19 and in Applicant's specification at page 6, line 29, and page 10, lines 5-7.

Dependent claim 15 has been amended to recite that the recess (6) has a substantially V-shaped in vertical section. Support for this amendment can be found in Applicant's specification at page 12, lines 10-11.

Finally, dependent claims 6, 19, 33 and 34 have been canceled as being redundant to their amended parent claims 1 and 23, and the remaining claims have been reviewed and amended as necessary for consistency and clarity.

Applicant believes that the above amendments do not present new matter. Favorable reconsideration and allowance of remaining claims 1, 3, 4, 7-18, 20-23, 26, 28-32, 35-46, 48, 50, 51, 53 and 56 are respectfully requested in view of the above amendments and the following remarks.

In the Office Action of August 12, 2003 (Paper No. 8), the Examiner made final the rejection of the claims remaining in the present US Patent Application.

Specifically:

(a) claims 23, 25, 26, 28-35, 42 and 44 were rejected under 35 USC §102 in view of WO 94/00980 to Howse (the “Howse publication”);

(b) claims 1, 3, 4, 6-13, 20 and 22 were rejected under 35 USC §103 in view of the Howse publication and Applicant’s admitted prior art (APA);

(c) claims 14-19, 21, 36-41, 43, 45, 46, 48 and 50 were rejected under 35 USC §103 in view of the Howse publication and U.S. Patent No. 5,685,109 to Rimback;

(d) claims 51-56 were rejected under 35 USC §103 in view of the Howse publication, the APA and Rimback;

(e) claims 23 and 44 were rejected under the judicially-created doctrine of obviousness-type double patenting over claim 1 of U.S. Patent No. 6,041,543 to Howse (the “Howse patent”);

(f) claims 1, 4, 6, 10, 11 and 22 were rejected under the judicially-created doctrine of obviousness-type double patenting over claim 21 of the Howse patent in view of the APA;

(g) claim 3 was rejected under the judicially-created doctrine of obviousness-type double patenting over claims 21 and 22 of the Howse patent in view

of the APA;

(h) claim 9 was rejected under the judicially-created doctrine of obviousness-type double patenting over claims 12, 19 and 20 of the Howse patent in view of the APA;

(i) claims 14-19 were rejected under the judicially-created doctrine of obviousness-type double patenting over claim 21 of the Howse patent in view of Rimback;

(j) claims 28-30, 32-35 and 42 were rejected under the judicially-created doctrine of obviousness-type double patenting over claim 1 of the Howse patent in view of the Howse publication; and

(k) claims 36-41, 43, 45, 46 and 50 were rejected under the judicially-created doctrine of obviousness-type double patenting over claim 1 in view of the Howse patent in view of Rimback.

The Howse publication is the priority document for the Howse patent. Adopting the convention used in Applicant's previous responses and previous office actions, passages cited from the Howse publication will be made in reference to the column and lines at which the passages are found in the Howse patent. For convenience, these references are at times individually or collectively referred to simply as "Howse."

Following Applicant's Rule 116 response filed October 13, 2003, the Examiner filed an Advisory Action on October 29, 2003 (Paper No. 10), in which the Examiner explained that Applicant's previous arguments had not placed the application in condition for allowance because (1) what is "sufficiently fine" for Applicant's particles to become airborne is a relative term, and that a very large insect could make Howse's particles airborne, and (2) Howse discloses a powder that "may become electrostatically charged during operation" and concluded that "[a]s the particles are considered to be sufficiently fine to become airborne, they are capable of becoming airborne, and thus become electrostatically charged, during operation by an insect flying thereover."

As a preliminary matter, Applicant notes that the Advisory Action did not address the rejections of claims 14-18, 21, 36-41, 43, 45, 46, 48, and 50-56, which subjected to the rejections in which Rimback was cited. Applicant requests that the Examiner respond to the arguments presented in their response filed October 13, 2003, which is incorporated herein by reference.

As now amended, Applicant's claims recite various features not disclosed or suggested by Howse, the APA, or Rimback. For example, none of the prior art of record discloses or suggests:

(a) accommodating a particulate material within a region of a surface so that the particulate material can be readily dislodged by air flowing at the surface but not readily dislodged by air flowing across the surface (see independent claims 1, 23, 45, and 51 and dependent claims 12 and 36);

(b) such a particulate material is not electrostatically charged for the purpose of attaching the material to a surface (see independent claims 45 and 51 and dependent claims 10 and 32);

(c) such a particulate material can be both rendered airborne and electrostatically charged from the mere action of the wing beat of a housefly (see dependent claims 4, 26, 50 and 56); or

(d) such a particulate material is initially deposited as an electrostatically charged powder whose charge is subsequently lost (see dependent claims 11 and 53).

Point (c) is in response to the Examiner's argument that a very large pest could dislodge Howse's electrostatically-charged particles; in fact, nowhere does Howse suggest that an insect pest could dislodge his electrostatically-charged particles.

As for the need for Howse to use electrostatically-charged particles, such clarification will be forthcoming in a Rule 132 declaration submitted by Philip E. Howse, whose is the sole inventor of both the present application and each of the Howse

documents. Also addressed in Mr. Howse's Rule 132 declaration will be the Examiner's argument that Howse's powder "may become electrostatically charged during operation," which the Examiner based on the following phrase at column 4, lines 8-13, of Howse: "Frictional charging of the particles . . . may take place . . . during operation." Specifically, as the sole inventor of the Howse publications, Mr. Howse is in the position to both explain what was meant by this phrase, as well as how one skilled in the art would interpret this phrase. Mr. Howse will attest that the Examiner's interpretation of this phrase, and therefore the second argument reported above as being made in the Advisory Action, is incorrect. More specifically, Mr. Howse will attest that Howse's particles must be electrostatically charged prior to use of the disclosed trap, and Howse's electrostatically-charged particles are not rendered airborne in the manner required by the present claims, regardless of how fine Howse's particles may be.

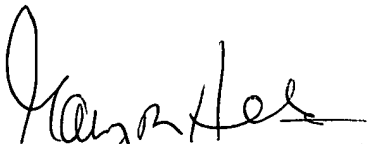
Application No. 09/700,863
Docket No. A0-1269
Submission dated February 12, 2004

Closing

In view of the above, Applicant respectfully requests that his patent application be given favorable reconsideration.

Should the Examiner have any questions with respect to any matter now of record, Applicant's representative may be reached at (219) 462-4999.

Respectfully submitted,

By 

Gary M. Hartman
Reg. No. 33,898

February 12, 2004
Hartman & Hartman, P.C.
Valparaiso, Indiana 46383
TEL.: (219) 462-4999
FAX: (219) 464-1166